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Paper No. 7

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SEP 10 2001

OFFICE OF PETITIONS

In re Application of
Cherouny, et al. :
Application No. 09/695,443 : ON PETITION
Receipt Date: October 24, 2000 :
Attorney Docket No.: PC 10 :
For: ELECTRONIC PROGRAMMABLE SPEED :
LIMITER :

This is a decision on the petition filed June 19, 2001, requesting that the above-identified application be accorded a filing date of October 24, 2000.

The application was deposited on October 24, 2000. However, on May 4, 2001, Initial Patent Examination Division mailed a notice requiring at least one claim in compliance with 35 U.S.C. 112, second paragraph, and stating that the filing date of the application would be the date of receipt of at least one claim.

In response, the present petition was filed wherein petitioners argue that 32 claims were filed on October 24, 2000. In support, the petition is accompanied by a declaration signed by petitioners' attorney, James W. Hiney, stating his belief that he deposited the application in Express Mail service on October 24, 2000, with 32 claims.

The petition is further accompanied by claims 1-32 and newly signed declarations by the inventors.

The argument and evidence have been considered, but are not persuasive. The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that 19 pages of specification were filed on October 24, 2000. The USPTO file indicates that no claim or abstract was filed on October 24, 2000, since no claim (other than those supplied on June 19, 2001) or abstract is present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that counsel believes the claims were among the papers he mailed is not more persuasive than the actual papers shown to have been received by the official file.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

No postcard receipt has been submitted in this case. If petitioners have a postcard receipt showing that 32 claims were filed on October 24, 2000, the postcard receipt or a copy thereof should be supplied.

At the present time, the petition must be dismissed. However, this decision is made without prejudice to reconsideration. If petitioners have a postcard receipt acknowledging receipt of 32 claims on October 24, 2000, the postcard receipt or a copy thereof should be supplied accompanied by a letter requesting reconsideration of this decision. No additional petition fee is required for such a request.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

The application is entitled to a filing date of June 19, 2001, the date claims 1-32 were filed.

Further correspondence with respect to this matter should be addressed as follows:


By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

The application is being returned to Initial Patent Examination Division for further processing with a filing date of June 19, 2001, using claims 1-32 and the declarations filed on that date.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy